

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ROBERT W. HAYNES,	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 3:99 CV 2551 (CFD)
	:	
ROBERT KANAITIS, and	:	
TODD BERGESON,	:	
Defendants.	:	

RULING ON MOTION IN LIMINE

Pending is the plaintiff's Motion to Preclude Re: Criminal Convictions [Doc. #62]. The plaintiff moves for an order precluding defendants from mentioning, via testimony, exhibits, arguments and inferences, any admissible crime by name. In addition, the plaintiff moves to preclude any conviction for which ten years has elapsed since the date of the conviction or of the release of the plaintiff from the confinement imposed for that conviction. Finally, the plaintiff objects to the use of any prior convictions for impeachment of the plaintiff. The defendants oppose the motion and argue that they should be permitted to impeach the plaintiff with evidence of prior criminal convictions should he testify.

The defendants wish to introduce evidence at trial regarding the following prior convictions of the plaintiff obtained in the Connecticut Superior Court: (1) assault in the first degree, in violation of Conn. Gen. Stat. § 53a-59(a)(1), sentenced on December 9, 1998 to 20 years incarceration; (2) larceny in the third degree, in violation of Conn. Gen. Stat. § 53a-124, sentenced on November 25, 1992 to two years incarceration; (3) sale of narcotics, in violation of Conn. Gen. Stat. § 21a-277(a), sentenced on November 25, 1992 to seven years incarceration; (4) possession of narcotics, in violation of Conn. Gen. Stat. § 21a-279(a), sentenced on November

25, 1992¹; and (5) possession of narcotics, in violation of Conn. Gen. Stat. § 21a-279(a), sentenced on November 25, 1992 to seven years incarceration.

I. Standard

Federal Rule of Evidence 609 is entitled “Impeachment by Evidence of Conviction of Crime” and provides, in relevant part:

(a) General rule. For the purpose of attacking the credibility of a witness,

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

Fed. R. Evid. 609(a).

Rule 609(a)(1) mandates that evidence of a witness’s felony convictions shall be admitted if the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. A district court is granted wide discretion in assessing the probative value and prejudicial impact of such evidence. See United States v. Pedroza, 750 F.2d 187, 202 (2d Cir. 1984), cert. denied, 479 U.S. 842 (1986).

Rule 609(a)(2) mandates the automatic admission of the witness’s convictions for crimes of dishonesty without regard to the prejudicial effect, because such convictions are highly relevant to his credibility as a witness, while the same degree of relevance cannot generally be

¹The judgment of conviction submitted by the defendants does not set forth the sentence Mr. Haynes received for this offense.

claimed for other convictions. See United States v. Hawley, 554 F.2d 50, 52 (2d Cir. 1977). Indeed, it is well settled that evidence of such convictions is not subject to the balancing set forth in Rule 403. See Diggs v. Lyons, 741 F.2d 577, 578-82 (3d Cir. 1984), cert. denied, 471 U.S. 1078 (1985); United States v. Kiendra, 663 F.2d 349, 353-54 (1st Cir. 1981); United States v. Toney, 615 F.2d 277, 279-80 (5th Cir.), cert. denied, 449 U.S. 985 (1980); see also 4 J. Weinstein & M. Berger, Evidence § 609.04[1], at 609-20 to 609-21 (2003). To determine whether the crime of conviction is one involving dishonesty and, thus, admissible under Rule 609(a)(2), the court must look to the elements which the prosecutor had to prove in order to convict the defendant, not the details of the crime. See 4 J. Weinstein & M. Berger, Evidence § 609.04[2][b], at 609-22 (2003).

However, Rule 609(b) provides a temporal limitation on the use of any convictions for impeachment purposes. That rule provides, in relevant part:

(b) Time limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

Fed. R. Evid. 609(b).

In addition to the temporal limitation, the admissibility of evidence of prior convictions under Rule 609(a)(1) is subject to the Rule 403 balancing test. Rule 403 requires courts to exclude relevant evidence “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” In applying a Rule 403

balancing test as to the admissibility of such prior convictions for impeachment purposes, the Court considers several factors, including (1) the impeachment value of the prior offense, (2) the date of the conviction and the witness's subsequent history, (3) the degree of similarity between the past crime and any conduct of the witness that is at issue in the present litigation, (4) the importance of the witness's testimony, and (5) the centrality of the credibility issue. See United States v. Hayes, 553 F.2d 824, 828 (2d Cir. 1977); Hawley, 554 F.2d at 53 n. 5; 4 J. Weinstein & M. Berger, Evidence § 609.05[2] at 609-34 (2003).

II. Admissibility of Prior Convictions for Impeachment Purposes

Based on a consideration of these factors, the Court makes the following rulings with respect to the five convictions at issue, subject to either the parties agreeing to the facts of the convictions or the defendants proving the prior convictions.

1. Assault in the First Degree

Pursuant to Rule 609(a)(1), the Court concludes that the probative value of evidence of this conviction is not substantially outweighed by the danger of unfair prejudice. Accordingly, the plaintiff's motion to preclude evidence with respect to this conviction for impeachment of the plaintiff is denied, and the defendants may cross-examine Mr. Haynes concerning this conviction should he testify.

2. Larceny in the Third Degree

Pursuant to Rule 609(a)(1), the Court concludes that the probative value of evidence of this conviction is not substantially outweighed by the danger of unfair prejudice.² Accordingly,

²While most conduct constituting "larceny," as defined in Conn. Gen. Stat. § 53a-119, appears to involve dishonesty, and thus would not be subject to the Rule 403 balancing test under Rule 609(a)(2), it is not clear that *all* conduct constituting "larceny" involves dishonesty, such as

the plaintiff's motion to preclude evidence with respect to this conviction for impeachment of the plaintiff is denied, and the defendants may cross-examine Mr. Haynes concerning this conviction should he testify.³

3. Sale of Narcotics

Pursuant to Rule 609(a)(1), the Court concludes that the probative value of evidence of this conviction is not substantially outweighed by the danger of unfair prejudice. Accordingly, the plaintiff's motion to preclude evidence with respect to this conviction for impeachment of the plaintiff is denied, and the defendants may cross-examine Mr. Haynes concerning this conviction should he testify.

4. Possession of Narcotics

Pursuant to Rule 609(a)(1), the Court concludes that the probative value of evidence of this conviction is substantially outweighed by the danger of unfair prejudice. First, the superior court judgment of conviction does not set forth the sentence Mr. Haynes received for this offense. In addition, its probative value as to credibility is not significant as it involves only possession of narcotics.

5. Possession of Narcotics

Pursuant to Rule 609(a)(1), the Court concludes that the probative value of evidence of

extortion. Accordingly, Mr. Haynes's third degree larceny conviction will be analyzed under Rule 609(a)(1), and thus subject to the Rule 403 balancing test. Defendants have not demonstrated that this conviction involved dishonesty or false statement. See Hayes, 553 F.2d at 827-28.

³Mr. Haynes was sentenced for this offense on November 25, 1992 to two years imprisonment. Thus, his release from confinement date falls within the ten-year period of Rule 609(b). That is also true as to Mr. Haynes's prior conviction for sale of narcotics.

Revealing the details of any of Mr. Haynes's prior convictions, however, may create the danger of unfair prejudice in the minds of the jurors. See Daniels v. Loizzo, 986 F. Supp. 245, 251 (S.D.N.Y. 1997). Thus, the Court limits the cross-examination of Mr. Haynes for impeachment purposes to the name of the prior offense, the date of the conviction, the court, and the sentence.

The Court hereby GRANTS in part and DENIES in part plaintiff's Motion to Preclude Re: Criminal Convictions [Doc. #62]. Specifically, the following evidence will not be admissible at trial: the two possession of narcotics convictions. However, evidence of the three remaining prior convictions will be admissible at trial, limited to the name of the offense, date, court, and sentence received.

/s/ CFD
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE